IN THE

Supreme Court of the United States

October Term, 1977

77-348

RICHARD T. TRACY, SR.

Petitioner,

v.

RODGER A. GOLSTON, ET AL,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR WRIT OF CERTIORARI

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Petitioner Pro Se
Attorney for Petitioner

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MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR WRIT OF CERTIORARI

Petitioner moves this Court to accept jurisdiction of this, his Petition for Writ of Certiorari or an Alternative Writ of Mandamus or Prohibition under this Court's appellate and supervisory powers. Petitioner, an incumbent City Court Judge of the City of Phoenix, Arizona, has been subjected to invidious discrimination by a usurping city administrative board, dominated by the state judiciary in the person of the Chief Justice of the Arizona Supreme Court, other judges and officers of the County and State Bar Associations and three possibly uninformed laymen in retaliation for exercise of First Amendment rights.

Such board exceeded their jurisdiction, usurped the

powers of elected city officials and acted contrary to the laws imposed upon the states by the First and Fourteenth Amendments of the United States Constitution.

Respondents have been shielded from responding for their acts by both State and Federal Judiciary who, in so doing, have departed from the accepted and usual course of judicial proceedings, this apparent conduct having been sanctioned by both the Ninth Circuit Court of Appeals and the Arizona Supreme Court.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1977

IN THE MATTER OF

RICHARD T. TRACY, SR.,
Judge of the City Court,
Phoenix, Arizona,

Petitioner,

AGAINST

RODGER A. GOLDSTON, JOHN WENTZ, ANTHONY H. MASON, ROBERT C. BROOMFIELD, STANFORD LERCH, JAMES CAMERON, JAMES O. WHITE, CHARLES LEE WHITECRAFT, ROBERT J. DONOHOE, MARGARET P. HANCE, WILLIAM DONAHUE, JOY W. CARTER, ROSENDO GUTIERREZ, KENNETH O'DELL, WILLIAM P. DIXSON, RALPH SMITH, RICHARD GARCIA, and the City of Phoenix, Arizona, a Municipal Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND THE ARIZONA SUPREME COURT

IN THE

Supreme Court of the United States

October Term, 1977

RICHARD T. TRACY, SR.,
Judge of the City Court, Phoenix, Az.,

Petitioner,

v.

RODGER A. GOLSTON, et al,

Respondents.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case No. 77-2034
AND
WILLIAM P. DIXON, et al
ARIZONA SUPREME COURT
Case No. 12760 and Case No. 13195

Petitioner prays that Writ of Certiorari be issued to the United States Court of Appeals for the Ninth Circuit to review before judgment is issued in that Court. The Judgment of the District Court which denied Petitioner relief due to a fraudent State Judgment finally determined by the Arizona Supreme Court. Or for this Court to issue an alternative Writ of Mandamus or Prohibition in regard to the United States Court of Appeals for the Ninth Circuit's Order of June 8, 1977, denying injunctive relief to

stay proceedings in the Arizona Supreme Court, on a Judgment which purports to pertain to Civil Rights Claims which were not filed or adjudicated in the State Court and on its face is void.

The fraudulent Superior Court Judgment allowed to stand when the Arizona Supreme Court refused jurisdiction in Special Action No. 12760 on July 20, 1976, was in desperation appealed to the Arizona Court of Appeals a possible impartial State tribunal. Subsequent to the District Court having dismissed or abstained in the federal action, the Chief Justice of the Arizona Supreme Court, an individual defendant in the Federal Suit, transferred that appeal to the Arizona Supreme Court for immediate hearing and then disqualified himself.

The United States Court of Appeals for the Ninth Circuit has sanctioned the gross departure from applicable decisions of this Court commencing with *Yeck Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1885) and from accepted and usual course of judicial proceedings in an effort to conceal judicial corruption, so as to call for an exercise of this Court's power of supervision.

Petitioner's apprehension that he will not receive a fair hearing in the lower tribunals is based on prior unorthodox decisions and procedures with final judgment being awarded Respondent Defendants without evidence. Respondents, as in the past, advance sham defenses such as citing *Paul v. Davis*, 424 U.S. 693, and this Court's requirement of a "tangible interest, such as employment," required to demonstrate liberty or property interest, knowing Petitioner was dismissed from his employment as City Judge and prevented from engaging in his profession by

vicious, false charges manufactured by Respondents. In the State Case, they argue that an "ordinance is not a law." That an official body created by law, exercising powers in excess of all jurisdiction of the delegating authority is merely a group of "civil minded individuals," the same definition could apply to a lynch mob, the facts will reveal procedures employed would be appropriate for the latter, not an official body composed of judges, lawyers and learned laymen.

OPINIONS BELOW

None of the lower Court opinions has been reported.

The Judgment of the District Court, rendered by the Senior Judge, the Honorable Martin Pence, assigned to the Motions by the Honorable Walter E. Craig, Chief Judge of the Federal District Court for Arizona, was entered on April 22, 1977 and is reproduced as Appendix A.

The Notice of Appeal, which includes some of the grounds for post judgment relief, there being no judge to hear or consider post judgment relief, was filed on April 25, 1977 and is reproduced herein as Appendix B.

The pronouncement of judgment in which the Senior Judge dismissed the Federal Claims and directed Petitioner to exhaust solely state administrative remedies, which had already been denied in the State Court, is reproduced as Appendix C.

The Judgment in the State Court, in a class action which sought to review and void by Special Action (Writ of Certiorari) Quo Warranto and violation of Open Meeting Law, the prior proceedings by the Judicial Selection Board and City Council, summarily dismissed with prejudice and Conclusions of Law and Fact worded to include

claims and parties not presented, is reproduced as Appendix D.

The Judgment of the Arizona Supreme Court in Case No. 12760 refusing jurisdiction to review by Special Action (Writ of Certiorari) the judgment of the Superior Court in Case No. C 333371 is reproduced as Appendix E.

The Judgment of the Superior Court was entered on both July 7, 1976 and on July 30, 1976, Notice of Appeal, which recited the first date, was filed on August 3, 1976 and held lawful regardless of the two dates for an identical judgment. That appeal case No. 13195, against the City of Phoenix, already briefed, was pending in the Arizona Court of Appeals until the day following the Senior Judge's Pronouncement of Judgment in the District Court, at which time it was transferred to the Arizona Supreme Court. The notification of transfer is reproduced as Appendix F. This case rests upon the same record that was before the Supreme Court of Arizona when it refused jurisdiction and affirmed the Trial Court on July 20, 1976. Case No. 12760 (Appendix E).

The order and timely Motion for Rehearing by the Court in Banc of the denial for injunctive relief by the U. S. Court of Appeals to stay the Arizona Supreme Court deciding the State Case, is reproduced as Appendix G.

No public vote was taken by City Council on Petitioner's request for a hearing and all discussion and consideration of Petitioner's removal on February 25 and March 2, 1976 took place in closed meetings.

JURISDICTION

This Court's jurisdiction is found in 28 U.S.C. 1254(1), 28 U.S.C. 1257(3), 28 U.S.C. 1291(3), 28 U.S.C. 1651 and 42 U.S.C. 1984. In enacting the latter section, it was the apparent intent of the Congress in specifically designating review of Civil Rights Chapter matters by the United States Supreme Court to assure the availability of a neutral and detached forum when, as in the case at hand, the local Federal and State courts are not available or impartial to process claims under 42 U.S.C.S. 1981 to 1986 inclusive and 42 U.S.C. 1988. This petition for certiorari is filed within 90 days after denial of a timely motion for rehearing by the Ninth Circuit Court of Appeals in banc.

STATEMENT AS TO JURISDICTION

All proceedings to date, state and federal, conflict with well established decisions of this Court and so depart from the accepted and usual course of judicial proceedings, which the Ninth Circuit of the United States Court of Appeals has thus far sanctioned. Sham and frivolous defenses asserted by defendants therein lead Petitioner to believe that irreparable damage will be suffered in much the same manner as in prior proceedings. The independence and integrity of the judiciary and fraudulent acts perpetuated to date on Petitioner calls for the exercise of this Court's power of supervision.

The State Action brought to void administrative proceedings on several grounds was improperly dismissed without trial or hearing and final judgment worded in such a manner as to create an apparent bar to Petitioner's proceeding upon civil rights violations against the officials. This Court

has the power to look to the record of State proceedings and has long give Section 28 U.S.C.S. 1291 a practical rather than technical interpretation. The sole criterion being whether further appellate review is possible within the state.

The presence of the Chief Justice of the Arizona Supreme Court as ranking member of the City of Phoenix Judicial Selection Board, refusal of the Arizona Supreme Court to grant jurisdiction on the very same case on July 20, 1976, so prejudiced Petitioner's State Case as to deny future appellate review. The Supreme Court or, if remanded, a Superior Court Judge is not likely to render affirmative relief and obligate the Chief Justice and persons he influenced to respond in damages or displace the successor in office for over a year. There was no jurisdiction in the State Court to adjudicate Petitioner's Civil Rights Claims in Superior Court Case No. 333371. Filed as a Special Action, A.R.S. 17 under Rule 4 and 6, the pertinent part reads:

> "If the action was brought to review a determination or order of a body or officer, the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct, order or prohibit specified action *by the defendant.*"

Brought to review the procedures employed by City Council and the Judicial Selection Board, review was denied in the same arbitrarily capricious and malicious manner as demonstrated by the Bodies sought to be reviewed. The Board and Council exceeded their jurisdiction as did the Superior Court. The action was filed in Federal District Court under 28 U.S.C. 1343, 1331 and 42 U.S.C. 1983 and 1986 inclusive and 28 U.S.C. 1988 after almost a year of harassment in State Courts.

QUESTIONS PRESENTED

It is difficult to conceive of any applicable constitutional or administrative law question not presented by reasons of the below proceedings. The City of Phoenix Judicial Selection Board's exercise of absolute power over City Council and Petitioner has caused legal error to be compounded in much the same manner as the "Watergate Affair." In summary, the principal questions are:

Is a member of the judiciary, who follows the mandate of the Judicial Code and oath of office and discreetly offers constructive criticism of an unfair and inefficient justice system, entitled to the Protection of the First, Fifth and Fourteenth Amendments of the United States Constitution?

Is an Attorney-Judge deprived of liberty and property when a board, composed of the highest ranking state judicial officer, other judges and lawyers of an integrated bar association, improperly intervene and prevent his reappointment to office and in so doing, issue false charges which damages his standing with the City Council and public as a judicial officer as well as injures his reputation in the profession and courts where he must practice his trade as an attorney?

Does the doctrine of immunity for judicial acts limit an investigative body to consider only acts of misconduct of an incumbent; can the incumbent be denied the right of notice and confrontation; has a superior judicial officer a right to prevent an incumbent from being considered by the electorate or the appointing body without legal process.

Whether a lawyer judge incumbent of an office until removed for "cause" by law can be removed without

notice or hearing when falsely charged, with being a "racist" "unfair to poor and other minorities", "superimposing himself as defense and prosecution", "directing a verdict of guilty in a criminal trial and not letting the matter go to a jury" and performing his duties in an "unsatisfactory manner," merely by the investigative body waiting until his fixed term expires?

Whether the District Court abused its discretion and exceeded its jurisdiction in disregarding the challenge to the array of jurists under 28 U.S.C. 455 by assigning the hearings on Motions for Summary Judgment to a Senior Judge rather than grant or deny the motion and allow an opportunity for the filing of an Affidavit under 28 U.S.C.S. 144, Bias and Prejudice?

Did the Senior Judge have the power to dismiss Federal Civil Rights Claims supported by uncontrovertible evidence, on the basis that Petitioner exhaust his state remedies, limited at that time to an already denied administrative review, refused by not only the Superior Court, but also the Arizona Supreme Court. Those proceedings, alleged to have been a nullity, the Senior Judge understanding the State Courts could not be impartial, the burden of overturning an improper judgment, as well as other obstacles and at best would leave Petitioner where he took up the gauntlet.

Was there an abuse of discretion by the United States Court of Appeal in failing to invoke its equity powers when Petitioner demonstrated in the emergency motion of May 16, 1977 that the District Court granted Summary Judgment denying federal claims, requiring Petitioner to exhaust, inadequate state remedies ignoring allegations

of conspiracy supported by evidence that the following day a defendant in the federal case transferred from the Arizona Court of Appeals to the Arizona Supreme Court the state appeal on a void judgment which purported to decide the federal claims?

THE FACTS AND CASES

1. Plaintiff-Appellant, admitted to the Bar in 1954 after private law practice in Ohio and New York, relocated in Arizona for family health reasons. As a law clerk, he served the Arizona Supreme Court for one year, after private law practice, he was appointed a Phoenix City Court Judge pro tem then to a four year term on February 14, 1972. The court was in a state of chaos, unable to function, by example, persuasion, distribution of legal summaries, facts and figures, he assisted in reducing the great backlog of pending cases, which reduced new cases, helped implement rules and policies that eliminated waste and unequal treatment, particularly a practice known as "submit and appeal," whereby a plea disposed of the City Court case and de novo appeal to Superior Court resulted in mass dismissals or reduction of charge (Appendix H).

REACTION TO IMPROVEMENT IN THE COURT

2. The City administration dominated by a bi-partisan conservative group in control of Phoenix City affairs for twenty five years, preferred the previous system of confusion and double standard. In the Fall of 1973, the City Manager arranged for an unwarranted grand jury investigation and the Chief Judge was replaced by Respondent

Golston through a committee chaired by the Chief Superior Court Judge. Plaintiff had judiciously sought implementation of the 1960 Modern Courts Amendment, A.R.S. 1, Arizona Constitution, Article 6, Section 32 and Canon One, Judicial Code of Conduct to provide an efficient civil and criminal lower court system, as a member of a State Bar committee and then by aiding a Special Supreme Court Legislative Committee. With twice the national average per capita of judges, most contested criminal cases were not being processed and civil matters between one and three thousand dollars handled by arbitration outside the court system. Petitioner's efforts to improve the court, increase communications as a check and balance, assist in providing certainty in results of litigation and eliminate corruption brought about a coalition dedicated to keeping Petitioner in the background and then seeing to it that he was not reappointed. This was manifested in many ways but most apparent, in the appointment and acts of Respondent Golston, a young wheeling dealing prosecutor with no judicial experience, who assumed the Chief Judge position and administrator's duties and later became chairman and chief witness for the Judicial Selection Board, formed 90 days before the expiration of Petitioner's fixed term.

THE SEPARATION OF POWERS OF PHOENIX CITY GOVERNMENT

3. The City Court a "separate and independent branch of city government" by City Charter, which further provided that judges would be appointed by City Council for four year terms and removed only for cause by affirmative vote of two thirds of City Council. No provision is

made for removal by appointment of a successor or expiration of fixed term. City Charter, Chapter 8, section 3B (N1). The intent clear, to be politically independent, incumbents, prior to expiration of term, would be offered reappointment or a hearing before the City Council.

The 1975 and last Charter Government dominated City Council established the Judicial Selection Board with broad powers in selection of candidates to fill vacancies, with power over incumbents to "advise the Council regarding reappointment." Under City Ordinance § 8742 the Board was to hold meetings for the following purpose:

> "The board shall, whenever practical, hold public meetings designed to permit interested parties and groups to submit and recommend persons for consideration."

Instead it tried incumbents, never opened candidates' meetings. The Board, waited until Petitioner's fixed term expired, then on February 25, 1976, held an advertised public meeting and secret meetings, at which the Chairman,

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N1 Chapter 8, Section 1

"There shall be a city Court system as a *separate* and *independent* branch of the government of the City of Phoenix . . ."

Chapter 8, Section 3(a)(b)

"(a) The judges of the City Court shall be appointed by the Council of the City of Phoenix . . . *All subsequent appointments shall be for four year terms, a vacancy occurring* before the expiration of a term shall be filled by appointment for the remainder of the term."

"(b) Judges of the City Court *may be removed* by the City Council *for cause* on motion adopted by the affirmative vote of two thirds of the members of the Council." Emphasis supplied.

the City Prosecutor and Chief Public Defender were witnesses. The purpose was to review the judicial performance of three incumbents, two of whom had requested but were not permitted to attend any meetings. Having waited until fixed terms had expired, the Board acted as though they dealt with vacancies in office, removed two of the incumbents, interviewed applicants and when Petitioner protested and requested a Council hearing, which had been offered, coerced the City Council into denying a hearing or de novo appeal. The prestigious Board "threatened to resign en masse if its recommendations weren't upheld." Further, the Board, through its Chairman, issued vicious false charges to the press on March 2, 1976 after reappointing one incumbent and taking successors under consideration.

NO VACANCY DUE TO EXPIRATION OF FIXED TERM

4. Sections 38-291 and 395(b) A.R.S. and a long line of cases prevented a vacancy from occurring until the appointing body had "regularly acted," *McCall v. Cull*, 51 Ariz. 237, 75 P.2d 696, While Administrative Law Rules and the Open Meeting Law granted a right to a de novo hearing and A.R.S. 38-431.03.1, provided that upon "demand" by an "appointee or employee," "the discussion and consideration" of "employment or appointment" "occur at a public meeting."(N2) A.R.S. 38-431.05 provided:

N2 Section 39-431.03 A.R.S.

"A. This article shall not be construed to prevent governing bodies, upon majority vote of the members constituting a quorum, from holding executive session for only the following purposes:

1. Discussion or consideration of employment, assignment, *appointment*, promotion, demotion, salaries, disciplining or resignation of a public officer, appointee or employee of any governing body, except that with the exception of salary discussions, an *officer, appointee or employee may demand that such discussion or consideration occur at a public meeting*."

"All business transacted in any body during a meeting or public proceedings held in violation of the provisions of this article shall be null and void."

After demand upon both Board and Council, such bodies did meet secretly, voted to remove and replace Petitioner without notice or hearing of any kind. It was then that extensive press and T.V. coverage with charges against Petitioner commenced, inferring he was a "racist", "unfair to poor", etc., all intended to lose him Council and public support. Plaintiff appeared at City Council's weekly meeting on March 9, 1976 and requested a due process hearing, at which time his successor was appointed to a partial term and he, effective April 5, 1976, was to vacate his office.

PROCEEDINGS IN SUPERIOR COURT

5. After demand and refusal to prosecute by the Attorney General and County Attorney, Petitioner, on May 25, 1976, filed a Class Action form Petition under the following provisions:

(1) Quo Warranto, A.R.S. 12-2043

(2) Violation of Arizona Open Meeting Laws A.R.S. 38-431.07

(3) Administrative Special Actions A.R.S. 17 and A.R.S. 12-2001 (Review by Certiorari)

In an effort to void the aforesaid proceedings, mitigate damages, restore status quo and establish tenure for all incumbent City Court Judges, Maricopa County, Arizona, Superior Court Case No. C-333371. Such action followed directions of the United States Supreme Court in *Paul v. Davis*, 424 U.S. 693 and *Bishop v. Wood*, 426 U.S. 341 to attempt first to resolve disputes if possible on a local level.

The Superior Court Judge on June 22, 1976, limited hearing to a sham Motion to Dismiss. In granting Summary Judgment for Defendant, City of Phoenix and the new judges on basis of "absolute power" of Council and because the Judicial Selection Board allegedly conformed to State Constitution's provision of "Merit Selection", which does not apply to City Court Judges, the Superior Court Judge kept referring to the Chief Justice of the Arizona Supeme Court being present on the Board. The Formal Judgment and Findings of Fact and Law, however, encompassed claims and persons not before the Superior Court and made no reference to the Merit Selection Amendment, Arizona Constitution, Article 6, Section 36. The Court refused to allow witnesses to be called, defendants presented no verified pleadings, only Petitioner's evidence offered as exhibits in defense of a motion for Summary Judgment was before the Court. Rule 56(c) A.R.S. 16, Rules of Civil Practice. The Judgment and Findings (Appendix D) were deliberately worded to prevent Appellant from vindicating his federal civil rights or being compensated in any future action against the officials as individuals.

THE NEED TO CONTINUE AT THE STATE LEVEL

6. The direct interest of the Chief Justice, three Chief Judges, the City Administration, disgrace associated with the removal process and fear of future retaliation prevented Plaintiff from associating in private practice or obtaining public employment in his chosen field. On July 6, 1976, a Special Action was taken in Case No. 12760 to the Arizona Supreme Court on certiorari with the record. The Chief Justice disqualified himself and the Associate Justices, to whom Petitioner was also well known, allowed ten minutes of argument and refused jurisdiction (Appendix E).

To set aside the improper and fraudulent judgment, Notice of Appeal was filed in the Arizona Court of Appeals in Case No. 1 CA-CIV 3595 on August 3, 1976. Attempts to accelerate the appeal were frustrated by delay and dismissal efforts of Respondents. It was apparent delay was to allow the civil rights and slander statute of limitations to expire.

PROCEEDINGS IN THE DISTRICT COURT ON FEDERAL CLAIMS

7. On February 16, 1977, Petitioner duly commenced in the Federal District Court for Arizona, citing 28 U.S.C. 1331 and 1343, 42 U.S.C. 1981-1986 inclusive and 1988, three civil rights actions in one complaint seeking damages and injunctive relief against fifteen individuals who, under color of state law as City of Phoenix officials, deprived Petitioner of constitutional rights and immunities, his professional position and reputation as both an attorney and City Judge. Case No. CIV 77-121 assigned to Chief District Court Judge the Honorable Walter E. Craig.

THE COMPLAINT

8. The complaint charged certain individual Defendants, acting in their capacity as City Manager or Members of the City Judicial Selection Board, of engaging in a conspiracy to deprive Plaintiff-Appellant of his office as a member of a separate and independent branch of the City of Phoenix government. That some Defendants also occupied other official positions, as the Chief Justice of the Arizona Supreme Court, the Chief Superior Court Judge, State Bar Association Treasurer and President of Plaintiff's County Bar Association and misused the prestige of their other office to dignify unfair and unlawful proceedings in excess of all jurisdiction. That other Defendants were aware of the civil rights violations and assisted or failed to prevent the complained of acts.

The complaint sought injunctive relief to prevent the Respondents from maintaining or releasing any record of the actions taken against Petitioner; a declaratory judgment voiding the proceedings and legislation; reinstatement in office subject to hearing in accord with due process by the City Council; exemplary and compensatory damages, and protection from further acts by Respondents or others in their behalf to further deprive Petitioner of due process or equal protection.

MOTION UNDER 28 U.S.C. 455 AVOIDED

9. The District Court Judge, Walter E. Craig, did not request reassignment of the case to a District Court Judge not a member of the Arizona Bar Association as he customarily did in matters involving officers of the Bar Association or Arizona Supreme Court. The Petitioner, after a

sham Motion to Dismiss or Abstain was filed by Respondents, filed a Challenge to the Array of Jurists citing custom and provisions of 28 U.S.C. 455 and that he had a reasonable question concerning the ability of an Arizona Judge to be impartial. Petitioner then filed a Motion for Partial Summary Judgment requesting the equity relief usually afforded under *Regents v. Roth*, 408 U.S. 59; *Perry v. Sinderman*, 408 U.S. 593 and *Pickering v. Board of Education*, 391 U.S. 563 and attached exhibits illustrating his efforts through exercise of First Amendment rights to improve the local justice system in which he was employed as well as his affidavit and other evidence contraverting defenses raised and supportive of his Motion. Petitioner had with the complaint submitted several news articles and three editorials, some quoting the Respondent Golston, Chairman of the Judicial Selection Board, stating false charges allegedly levied against Appellant at secret meetings of the Board. Petitioner, in his affidavit and complaint, alleged all charges except the "directed verdict" charge were not included in the transcript of the public meeting.

The District Court Judge assigned both Motions to a visiting Senior Judge, the Honorable Martin Pence of Hawaii, for disposition during his temporary assignment to Arizona from April 4 to April 23, 1977 without ruling on the Motion filed under 28 U.S.C. 455 and making it impossible to file an affidavit of bias and prejudice under the circumstances. Petitioner, an attorney for over twenty years, although not experienced in Federal or Civil Rights matters, was then put on notice that, after a year of harassment in State Court, he was to be denied justice in the Federal Court. Motions to dismiss are

disfavored. If pleadings are defective, the right to amend is usually granted and such motions can require several hearings. Rule 8F, Federal Rules of Procedures provides, "All pleadings shall be so construed as to do substantial justice." *Azar v. Conley*, 456 F.2d 1382 (6th Cir. 1972); *Wood v. Maryland Casualty*, 322 F. Supp. 295 (D.C. La. 1971); *Boles v. Fox*, 403 F. Supp. 253; *U.S. v. Diebold*, 369 U.S. 654; *Haines v. Kerner*, 404 U.S. 519 (1972); *Boline v. United Farm Workers*, 494 F.2d 541 (9th Cir. 1974); *Lownscbuss v. Kane*, 520 U.S. 55 (2d Cir. 1975). Just prior, this Court laid down the following direction to Federal Courts in *Arlington Heights v. Metro Housing Corp.*, ___ U.S. ___, 50 L. Ed. 2d 450, 97 S. Ct. ___:

> "Determining whether invidious discriminating purpose was a motivating factor demands a sensitive inquiry into circumstantial and direct evidence."

The Petitioner had alleged in his Complaint, Motion for Partial Summary Judgment and evidence that was uncontraverted, such actions of the state officials was in retaliation of exercise of First Amendment Rights. *Pickering v. Board of Education, supra*; *Rafferty v. Philadelphia Psychiatric Center*, 356 F. Supp. 500 (1973); *Dombrowski v. Pfister*, 380 U.S. 479 (1965), where the United States Supreme Court created an express exception to the abstention doctrine for cases involving the right of free expression. Prior to the hearing, in *Mt. Healthy v. Doyle*, ___ U.S. ___, 50 L. Ed. 2d 471, 97 S. Ct. ___, this Court held evidence of retaliation for exercise of First Amendment rights shifted the burden onto the agency to "show by a preponderance of the evidence that it would have reached such a decision as to re-employment even in the absence of the protected conduct."

Petitioner was, by the actions of the District Court Judge, placed in the same type of position he was in when the Chief Justice of the Arizona Supreme Court and Chief Superior Court Judge sat upon a board allegedly hearing evidence regarding his judicial performance and qualifications from his superior, the Chief Presiding City Court Judge and his subordinates. And as in the state case, the District Court Judge and Senior Judge acted arbitrarily, capriciously and maliciously and departed from the normal, accepted and usual course of judicial proceedings. They resolved and decided federal questions in a way which conflicted with decisions of the Supreme Court and as in the state case signed a judgment inconsistent with the Pronouncement of Judgment so as to award Summary Judgment on the merits which Petitioner was prevented from presenting, many clearly jury questions.

SENIOR JUDGE DISREGARDED THE EVIDENCE AND THE LAW

10. While Petitioner's Motion for Partial Summary Judgment was well supported with uncontraverted evidence and briefed recent federal court holdings, Respondents submitted no evidence, no verified pleadings, no witnesses, supported only by cases overruled by the Supreme Court in *Monroe v. Pape*, 365 U.S. 167, when it charged the traditional allocation of responsibilities between the State and Federal Courts which led to spectacular extension in the field of human rights. In the face of numerous citations following *Regents v. Roth*, *Perry v. Sinderman*, *supra*, on government employment rights and current law which does not require exhaustion of state remedies, *McNeese v. Board of Education*, 373 U.S. 668, 83 S. Ct. 1433, 10

L. Ed. 2d 622 (1963) and *Steffel v. Thompson*, 415 U.S. at 472, 94 S. Ct. at 1222, 39 L. Ed. 2d at 522, where this Court said:

> "When federal claims are premised on 42 U.S.C. Sect. 1983 and 28 U.S.C. Sect. 1343 (3) - as they are here - we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights."

THE DISTRICT COURT DISMISSED AND ABSTAINED

11. On April 7, 1977, after subjecting Petitioner to critical questioning which further brought out the existence of *Gibson v. Berryhill*, 411 U.S. 564, 93 S. Ct. 1689, 36 L. Ed. 2d 488, abuses by the state judiciary, the Senior Judge made the following ruling denying Petitioner's motion for partial summary judgment:

> "The Court: In effect, I am abstaining from everything except just this one, narrow claim, that's all. I am not abstaining: I am not using the England case. No, I am not abstaining. I am just simply ruling that he has no cause of action. He stated no cause of action to allow him—this is your motion to dismiss—not on the basis of everything that's over in the state, not on the basis of abstention; although if you want me to, I'll put that as a double barrel, even if I am wrong on the first dismissal, I will also state that I would abstain from everything else. You can put that in. If I am wrong in dismissing the actions other than just this one, narrow issue—one, narrow facet of the complaint—I would abstain from any of the rest because it appears to me from the pleadings and what has been represented here that all of the actions can be properly, and should properly be heard over on the state side and in the state courts where they now are resting.
>
> "Prepare the order."

THEN THE STATE CASE WAS TRANSFERRED

12. The following day, on April 8, 1977, the state appeal, as one of the 144 transfers from 2337 cases processed or pending in the Arizona Court of Appeals during the year, was transferred on order of Chief Justice Cameron, a Respondent in his individual capacity, to the Arizona Supreme Court for oral argument at the earliest opportunity. Assigned Case No. 13195, it is the same case which, under No. 12760, the Supreme Court dismissed on July 20, 1976. The Chief Justice again disqualified himself.

DISTRICT COURT AWARDED SUMMARY JUDGMENT

13. The formal District Court Judgment, filed April 22, 1977, (Appendix A) states no grounds for dismissal but renders final judgment upon the merits under Rule 56, F.R.C.P. Summary Judgment. Although the Motion was characterized as being under Rule 12(b)(6), F.R.C.P., failure to state a claim, it was based on matters outside the pleadings and is not denominated as being without prejudice. *Tuley v. Heyd*, 482 F.2d 590 (5th Cir. 1973).

The judgment grants dismissal as to all parties in their individual capacity thereby relieving all Respondents from any liability whatsoever deprving Petitioner of a jury trial and reduces the Senior Judge's formerly stated right to a "*Roth* and *Sinderman*" hearing to a *Roth v. Regents* hearing before the Judicial Selection Board in their official capacity. They are neither the appointing body referred to in those cases nor a body that could be held under 42 U.S.C. 1983, *Monroe v. Pape, supra*, and forecasts the futile and inadequate ultimate relief to which Petitioner could "possibly" be entitled.

Notice of Appeal was filed in April 25, 1977 and since no judge would be available for post judgment relief, some of the grounds which were related to the Senior Judge, who indicated the matter was out of his hands, were included in the notice.

Upon learning of the State Appeal transfer to the Arizona Supreme Court, an extraordinary Emergency Motion to restrain that Court for passing upon a case purporting to deal with the same subject matter contained in the Federal Appeal in aid of their jurisdiction, 28 U.S.C. 1651(a), was made to the United States Court of Appeals for the Ninth Circuit and denied by a two judge panel headed by the Arizona Circuit Court Judge.

On June 8, 1977, a motion for rehearing by the Court in Banc, under Appellate Rule 35(b), F.R.A.P. was also denied and an investigation into whether all judges, who were in regular active service, received a copy of the motion proved negative. The fact that had the State Appeal not been transferred by the Respondent Cameron, it would not have been decided for at least a year was clearly stated in the Motion and uncontraverted in the response as was the lack of an impartial state forum and that Court's prior rejection of the case.

CONSTITUTIONAL AND ETHICAL RESTRICTIONS DISREGARDED

14. Petitioner, over the past eighteen months, has been deprived of Constitutional rights and immunities under First, Fifth and Fourteenth Amendments by various members of the judiciary attempting to protect other members of the judiciary. Such Respondents acted in their individual capacity, in violation of specific provision of the Arizona

Constitution, Article Six, Section 25, and Canon Five of the Code of Judicial Conduct, as members on the Judicial Selection Board and usurped the mandatory powers of City Council in an attempt to remove from office without legal cause one who dared to offer constructive criticism regarding an unfair and inefficient justice system. In spite of diligent efforts, Petitioner has been unable to obtain effective legal representation, bonafide hearings or trial at any stage. The sham briefs of Respondents now filed in the United States Court of Appeals and the Arizona Supreme Court, involvement of the Chief Justice as a party and interest of the Federal Circuit Court Judge from Arizona, who has been sheperding the Petitioner's case, leads to the unfortunate inescapable conclusion that unless this Court exercises its discretionary powers, Petitioner will again be denied due process of law by another procedural trap and revolve from Court to Court.

RULE OF LAW NOT AVAILABLE

15. Had the usual course of judicial proceedings been available, the State action would have been tried within 20 to 60 days, and discovery taken place in the federal action. The best Petitioner can expect is to be allowed to start all over again and be subjected to the same harassment, as alleged the Judicial Selection Board was composed in such a manner as to produce such result. The Ninth Circuit Court of Appeals has so far sanctioned such a departure by the lower court, apparently considering the matter as included in the class of cases subject only to the will of the State's highest Court and not *Schware v. Board of Bar Examiners, infra; Dombrowski v. Pfister, supra,* or *Gibson v. Berrybill, supra,* abuses of power and bias creating an exception to

Younger v. Harris rule, 401 U.S. 37 and principles of comity.

REASON FOR GRANTING THE WRIT

1. Petitioner believes a showing has been made that this Court should grant the Writs applied for to resolve a conflict between State and Federal Courts which will be used to deny him due process, as an exercise of the Court's power of supervision. The District and United States Court of Appeals obviously are reluctant to expose the improper conduct of certain Respondents. Present also is an imperative question of public importance concerning the need to define, "independence and integrity" of the judiciary.

On June 20, 1976, while this nation prepared to celebrate its bicentennial, Petitioner, ostracized and abandoned by the legal community by reason of his defying and autocratic City Judicial Selection Board and having requested a hearing, filed a brief in the Superior Court, which in part read as follows:

> "Plaintiff has brought this action on his behalf and all those similarly situated alleging the violation of fundamental rights which not only visited tragedy and hardship upon the individual judges and their families, but indirectly the citizens of this community. The independence of the judiciary, separation of the powers of government and the right of the public to be informed of the reasons for governmental decisions and participate in the proceedings are at issue."

"On July 4, 1776, the Declaration of Independence was signed which provided in part:"

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by

their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

"History advises that many of the signers of both the Declaration of Independence and later the Constitution employed slaves, tenant farmers or workers that were thought of as no more than instruments of commerce. It was not until 1868, with the adoption of the 14th Amendment, commonly known as the due process clause, that the promise of *Life, Liberty,* and the *Pursuit of Happiness* held meaning for the common man or woman.

"AMENDMENT XIV (Rights of Citizenship) United States Constitution:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"The Due Process Clause brought down from the Magna Charta is also found in Article 2, Section 4 of the Arizona Constitution; as the United States Supreme Court said in *Truax v. Corrigan*, 42 SCt 124, 257 U.S. 312-66 LEd 254:

"The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily

or capriciously but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. *Hurtado v. California*, 110 U.U. 516, 535. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty and property, which the Congress of the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law' 'this is a government of laws and not of men,' 'no man is above the law' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws."

The message of the Declaration of Independence is not moot, when Constitutional safeguards are as in this case cast aside, those charged with the responsibility of enforcing its provisions, must not find excuses to step aside and allow the abuse to continue. The century of delay in enforcing the 14th Amendment and accompanying abuses by States demonstrates the burden placed on this and all Courts.

The Superior Court summarily dismissed with prejudice the Petition, although the proceedings before the Board and City Council were for numerous reasons void, not only under recent decisions cited in this application, but under cases as *Wong Yen Suing v. McGrath*, 339 U.S. 33, 70 S. Ct. 445, 95 L. Ed. 616, and *Yeck Wo v. Hopkins,* 188 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1885) where this Court said:

"For the every idea that one may be compelled to hold his life, or the means of living or any material right essential to the enjoyment of life at the mere will of another, seems to be intolerable in any

country where freedom prevails, as being the essence of slavery itself."

The use of confidential information which a board would not permit the candidate to see or respond to was condemned by this Court in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 753, 1 L. Ed. 2d 796 when this Court held:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment . . . . Regardless of how the States grant of permission to engage in the occupation is characterized."

That doctrine, well established in Arizona Law by the many cases set out by the Arizona Supreme Court in *Application of Levine*, 97 Ariz. 88, 397 P.2d 205. A case where an investigative board denied due process and attempted to usurpt the powers of the Supreme Court. That case laid out the law on the right of confrontation and appeal to the delegating authority.

The Superior Court granted final Summary Judgment without hearing in the face of decisions such as *Vazzano v. Superior Court*, 106 Ariz. 542, 479 P.2d 685 and *Johnson v. Collins*, 11 Ariz. App. 327, 464 P.2d 647, which place the burden of proof upon the defendant City Council and its Board. The Supreme Court denied jurisdiction on the Special Action ignoring a long line of decisions stating that certiorari to that court was the proper method of testing procedures used to remove a judicial office-holder, *Johnson v. Collins, supra,* as well as lack of compliance with Arizona Rules of Procedure and statutory law.

The Federal District Court dispensed the same type of justice when, almost a year later, it dismissed or abstained on all Petitioner's federal claims leaving him to exhaust already denied state administrative remedies. The Senior Judge, like Petitioner, apparently had no confidence in the success of state proceedings and for that reason, attempted to reserve a hearing so Petitioner can hold his head up when he walks into a public place. How inadequate or improper has already been demonstrated and can be left to the imagination. The witnesses will, in the main, be employees or subordinates of Respondents. If Petitioner is successful, then the Chief Justice and the other public officials inherit a stigma. This, the District Court and Court of Appeals for the Ninth Circuit wish to avoid.

INDEPENDENCE AND INTEGRITY OF THE JUDICIARY

2. Under our Constitutional form of government the judiciary has carefully avoided non judicial assignments from the legislative branch. The reason is summarized in *Hayburns Case*, 2 D.C. 11 409, 1 L. Ed. 436 (U.S. 1792) and *Davies v. Osborne*, 14 Ariz. 185, 125 P. 884 (1912), as Arizona became a State. In *City of Pboenix v. Pensinger*, (1952), *supra*, the Arizona Supreme Court found unconstitutional a City Charter Amendment which called for judges of a Court of Record to select candidates for the office of City Magistrate, later, to be called City Judges, Arizona Constitution, Article 6, Section 25, Phoenix City Ordinance § 8742 calls for both Appellate and Superior Court Judges of Courts of Record to serve upon the same type board. The Chief Justice designated or assigned himself to serve at the removal proceedings of Petitioner and then stepped aside. The Chief Justice selects Chief Superior Court Judges and is also the

Chairman of the State Merit Selection System for candidates of Superior and Appellate Courts. The secrecy of that body's activities and procedures for removal of an incumbent judge are all set out in the Arizona Constitution, Article 6, Section 35 and Article 6.1. Final authority is in the Arizona Supreme Court. The integrated State Bar Association has been ruled to be immune from laws applicable to corporations or governmental agencies, *Bridegroom v. State Bar*, 27 Ariz. 47, 550 P.2d 1089 and only responsible to the Supreme Court.

SOVEREIGN POWER WAS PRESENT, THE ACCUSED WAS NOT

3. It can be seen that vast power over the destiny of a member of the bar or judiciary rested with Chief Justice Cameron, as he sat as a member of the City of Phoenix Judicial Selection Board. Authority over all judiciary in the County complete when he signed the oath of that office. The right of dissent by the four other lawyers, who served on the board would be inhibited, as would the right to refuse to appear or testify in the case of the City Prosecutor and Chief Public Defender, both of whom were summoned to testify for twenty minutes at the "private meeting" concerning the "confidential views of the members of your (their) office as to the quality and qualifications of the incumbent judges." The expected impact upon the three lay members of the board was found in the exhibit presented in the state case. Mr. Whitecraft, a School Superintendent, testified that the lay people based their decision on "proper judicial procedures" as recommended by the "judges on our (the Board) committee." The evidence also demonstrated the helpless position occupied by

the City Council, City Attorney and Petitioner's attorney.

The evils of concentration of power in one person or body warned of by James Madison, like the responsibility vested in federal courts by the supremacy clause, need not be cited, although obviously forgotten by those whose actions are brought before this Court for review. Petitioner believes it sufficient to call to this Court's attention that the power over incumbents was quasi judicial; the 1974 Revision of the Open Meeting Law 38-431, *et seq.* gave him the right to demand an open meeting before both Board and Council. In November 1976, Chief Justice Cameron authored an opinion in the Arizona Supreme Court, holding quasi-judicial proceedings subject to the exceptions of the act, 38-431.08 A.R.S. for "judicial proceedings and any political caucus," thereby nullifying the bulk of the act. *Arizona Press Club, Inc. v. Arizona Board of Tax Appeals*, 113 Ariz. 545, 558 P.2d 697. The Legislature amended the exceptions section to give judicial proceedings its common meaning, adding, "Of any Court." Laws of 1977 S.B. 1110. The right granted an employee or appointee before a review board is subject to the Open Meeting Provisions.

THE EVIDENCE AND STANDARD OF PROOF AS IMPROPER AS THE BODY AND PROCEDURES

4. Courts have universally adopted the pronouncement in *In re McGarry*, 380 R.I. 359, 44 N.E.2d 7:

> "We hold that public policy which renders a judge acting in a judicial capacity in a court proceeding immune from liability, applies with equal force to a disciplinary proceeding."

In *In re McLaughlin*, 153 Tex. 183, 165 S.W.2d 805, *appeal dismissed*, 343 U.S. 859, 75 S. Ct. 83, 99 L. Ed.

677, the Court held:

> "in so grave a matter as depriving a judge of his office, the appropriate standard of proof is clear and convincing evidence."

The Judicial Selection Board denied Petitioner his right to succeed to his office based on alleged hearsay testimony of employees of the Respondent City Manager, concerning the "confidential view" of other employees. The Chairman, Respondent Golston, the chief witness, brought to the closed meetings evidence involving "one judge" and at a proceeding concerning impartiality of the City Judges due to the unorthodox removal procedure, *State v. A.M. Segedy*, 20329069-OC, City of Phoenix Court, March 15, 1976.

When asked:

> "Q: and don't you think a person who appears before that kind of a Board situation can say many things since he knows they're not being taken and therefore, it would never be divulged to anybody. Maybe they could misinterpret or exaggerate or maybe give untruths, isn't that right?"

The then Chief City Court Judge's response was:

> "A: It's possible, sure."

The above recited evidence was before the Arizona and Federal Courts when they dismissed Petitioner's claims and request for injunctive relief. In *Chambers v. Central Committee*, 224 P.2d 583, the California Court held:

> "a judge is not answerable to the Bar Association, only the law and that to safeguard the independence of the judiciary, it is necessary to show misconduct on the part of the judge before subjecting him to any form of discipline."

Is the same test not applicable when the judicial hierarchy conducts the inquiry. Canon One of the Judicial Code

of Conduct, Rule 45 Arizona Supreme Court provides:

> "CANON ONE
>
> "A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective."

Webster's New World Dictionary defines:

> *Independence.* A being independent; freedom from control of another.
>
> *Integrity.* 1.A being complete; wholeness. 2. Unimpaired condition; soundness. 3. Uprightness, honesty and sincerity.

As a member of a separate and independent branch of government and the judiciary, Petitioner attempts to comply with the mandate of Canon One as amplified by Canons of Judicial Ethics, Raymond L. Wise, 2d ed. Mathew Bender 1970 pertaining to lower court judges and one aware of the need to raise the local standards. Petitioner laid claim only to being hard-working and honest, serving the law as it related to the needs of the public, and to raise the image of a legal profession which garnered little respect. Samples of that effort can be found in Appendices H & I, and demonstrates efforts to be in a position to fulfill his oath of office. He devoted to that task as much time as required, tormented by some, appreciated by others, even Chief Justice Cameron wrote twice regarding the Supreme Court's appreciation of Petitioner's efforts.

Unlike some of the Respondents who strive to be

identified as "conservative," Petitioner, as mandated by the Code and City Charter, avoided politics, as well as any interest in prosecution for corruption in the justice system. His goal was to establish a fair court system with checks and balances to enable the judiciary to perform its function. Petitioner must abandon modesty to point out to this Court that his Mexican-American bailiff and the sole black on the City Council opposed his removal from the bench, while efforts to deny any type of hearing where Petitioner can participate by Respondents, who have all the advantages, speaks well of his record as did exhibits in the trial courts. He is worthy of this Court's consideration as an individual citizen and representative of a class interested in establishing the integrity of the legal profession and in combatting oppression from any source.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By Richard T. Tracy, Sr.
Petitioner Pro Se

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

RICHARD T. TRACY, SR., Plaintiff, v. RODGER A. GOLSTON, et al., Defendants.	NO. CIV 77-121 PHX WEC JUDGMENT

(FILED: April 22, 1977)

Defendants having filed a Motion to Dismiss Plaintiff's Complaint, and Plaintiff having filed a Motion for Partial Summary Judgment herein; written memoranda having been filed, oral argument having been had on both Motions, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Partial Summary Judgment be denied and that Plaintiff take nothing thereby.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss Plaintiff's Complaint be granted in all respects, except for those allegations of Plaintiff's Complaint which can be read to state a claim within the purview of 42 U.S.C. § 1983 alleging that the Judicial Selection Advisory Committee, or members thereof in their capacities as such, advised the press of statements concerning Plaintiff made privately to the Advisory Committee by others, the effect of which resultant press coverage, within the purview of

Board of Regents v. Roth, 408 U.S. 564, 573, 33 L. Ed. 2d 548, 558-9, ". . . imposed upon him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. . ." Further, should Plaintiff in a subsequent trial thereon sustain such allegations, then ". . . due process would accord an opportunity to refute the charge[s] . . ." before the Advisory Committee.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of Plaintiff's other claims for relief be dismissed and prayers for relief be denied, except for the claim, and, if proved, the relief set forth above.

Consistent with the foregoing, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss be granted in toto as to those Defendants who are not members of the Judicial Selection Advisory Committee, being John Wentz, Margaret T. Hance, William Donahue, Joy W. Carter, Rosendo Gutierrez, Kenneth O'Dell and Amy T. Worthen, and that they be removed as Defendants in this action. In addition, the remaining Defendants herein, being Rodger A. Golston, Robert C. Broomfield, James Cameron, Stanford Lerch, Anthony H. Mason, Charles Lee Whitecraft, Robert J. Donohoe and James O. White, remain as Defendants only in their official capacities as members of the Judicial Selection Advisory Committee and that the Motion to Dismiss be granted in toto as to each of them in their individual capacities.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being more than one claim for relief presented in this action, there being multiple parties

involved, and there being no just reason for delay, the Court expressly directs the entry of Final Judgment herein as to all but the single claim and, if proved, the possible relief remaining to Plaintiff with respect only to certain Defendants in their official capacities as members of the Advisory Committee, all in accordance with the foregoing determination.

Done in Open Court this 22 day of April, 1977.

/s/ Martin Pence
The Honorable Martin Pence

APPENDIX "B"

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

RICHARD T. TRACY, SR. Plaintiff	)	
vs.	)	No. CIV 77-121
RODGER A. GOLSTON, et al Defendants	)	NOTICE OF APPEAL

(FILED: April 25, 1977)

NOTICE IS HEREBY GIVEN that RICHARD T. TRACY, SR., Plaintiff above named, hereby appeals to the United States Court of Appeals for the 9th Circuit from the Final Judgement [sic] and the whole thereof dated April 22, 1977. Such judgment is based upon the Court's oral order of abstenation on April 7, 1977 upon that portion of Plaintiff's complaint setting forth claims for conspiracy to violate civil rights, libel and slander and unjustified interference, while finding Plaintiff's civil rights may have been violated. With knowledge or uncontroverted allegations that the acts complained of were in retaliation of Plaintiff's exercise of free expression; that federally protected claims were not included in the State Class Action which was dismissed without hearing; that the State Courts had abandoned their traditional role of neutrality.

/s/ Richard T. Tracy, Sr.
RICHARD T. TRACY, SR.
Plaintiff

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

RICHARD T. TRACY, SR. Plaintiff, vs. RODGER A. GOLSTON, et al., Defendants.	)	NO. CIV 77-121 PHX WEC

PARTIAL TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on Thursday, April 7, 1977, at 3:55 P.M., at Phoenix, Arizona,

BEFORE:

HONORABLE MARTIN PENCE, Judge.

APPEARANCES:

RICHARD T. TRACY, SR., Esq. 7437 North 7th Street Phoenix, Arizona	Appearing as Plaintiff Pro Se;
EDWARD JACOBSON, Esq. Snell & Wilmer 3100 Valley Center Phoenix, Arizona	Appearing for the Defendants.

THE COURT: All right, thank you.

First, addressing myself to the last problem, namely, the motion for partial summary judgment, Mr. Tracy, that must be denied and is denied. For the Court at this time to order what you asked the Court to do, would be for the Court to decide now upon virtually all of the allegations of your complaint and determine that you were 100% right, and that you were entitled to have the immediate action on the part of the Court which you urge; and, that the Court does not feel it can or will do, or is permitted to do by the law, not upon the status of the case as it is presently before the Court. So, your motion for partial summary judgment is denied.

Now, back to the motion to dismiss, which is the underlying motion here, it clearly appears from the pleadings and from the moving papers, that practically every one of the issues before this Court here have been presented to the state court. I say, practically every one. It would appear that even though you, Mr. Tracy, have the actions asking for almost the same relief over in the state court as you have asked here, nevertheless the one that has bothered me all the way through, as Mr. Jacobson recognizes, is that which concerns your rights under §1983, and no other; as set forth there in both Roth and Perry versus Sinderman, namely, the allegations that there was an act of a state agency in declining to rehire you and, in connection therewith, making statements as to that basis for the rehiring, was certain acts on your part which would cast a stigma upon your reputation as a Judge, which was the position which you held, and might at the same time interfere thereby with your opportunity to be employed. Now, that last portion of it is a little bit weak,

because employment as a judge, and there are very few jobs that call for judges, and once you have been removed as a judge, ordinarily only a change in politics enables you to get back again. But, there have been changes in the political atmosphere, and I use that term "political" broadly, going far beyond party allegiance. There have been changes in the makeup of various boards and commissions. It might be that subsequent applications before subsequent boards or councils might lead to a different conclusion. That is purely hypothetical.

I am going to dismiss all of your claims except that one, and retain that at this time. I feel that you stated a cause of action under §1983, under that element of the possible state action in creating and developing that which would be a stigma upon your reputation, which would give you a different standing under both the Roth and Sinderman cases.

Now, as I said earlier, and I'll say it again, insofar as your claim regarding damages for alleged defamatory statements, defamation alone, as you know, doesn't establish a cause of action under any of the Sections 1981 through 1985. As you read undoubtedly, Mr. Tracy, in Williams versus Gorton, which you cited, 529 F2d 668, 1976, the case decided by a Judge from Hawaii—not decided, but written by Judge Choy; you cited it, and there it is.

Now, it would appear then, in light of my order, that you only have about three—how many were on that Committee?

MR. TRACY: The Committee contained seven individuals.

THE COURT: All right, whoever they are, those will

be the only seven left in your complaint here. I'll let you go ahead and let you take your depositions, whatever you want to do to find out what transpired, because, as I see it, everything else you can take care over on the state side.

MR. TRACY: If it please the Court, without the §1986 right, which is individuals who were aware of the commission of a violation of civil rights who do not prevent it... .

THE COURT: No, that's out.

MR. TRACY: Then I really see nothing that I can gain by discovery. I have put everything I have... .

THE COURT: Listen, you can at least go ahead with your action under §1983 in connection with your claim that you had a stigma cast upon your liberty by virtue of the release of the information by the state itself.

MR. TRACY: With due respect, may I have clarification. Are you saying—that is the very thing I asked for a motion for partial summary judgment upon.

THE COURT: Well, you don't have enough evidence to get a summary judgment on it. All you have is enough evidence to stay in Court.

MR. TRACY: Fine; thank you, sir.

MR. JACOBSON: Your Honor, do I assume correctly that the Court has decided not to abstain until the settlement of the matter before the Court of Appeals?

THE COURT: In effect, I am abstaining from everything except just this one, narrow claim, that's all. I am not abstaining; I am not using the England case. No, I am not abstaining. I am just simply ruling that he has no cause of action. He stated no cause of action to allow him—this is your motion to dismiss—not on the basis of

everything that's over in the state, not on the basis of abstention; although if you want me to, I'll put that as a double barrel, even if I am wrong on the first dismissal, I will also state that I would abstain from everything else. You can put that in. If I am wrong in dismissing the actions other than just this one, narrow issue—one, narrow facet of the complaint—I would abstain from any of the rest because it appears to me from the pleadings and what has been represented here that all of the actions can be properly, and should properly be heard over on the state side and in the state courts where they now are resting.

Prepare the order.

(Whereupon the proceedings were adjourned at 5:45 P.M., April 7, 1977.)

APPENDIX "D"

IN THE SUPERIOR COURT

MARICOPA COUNTY

RICHARD TRACY, SR.,)
Judge of the City Court,
Phoenix, Arizona,

Plaintiff,

v.

WILLIAM DIXON,)
RICHARD A. GARCIA,
RALPH G. SMITH, JR.,
etal,

Defendants.
_ _ _ _ _ _ _ _ _ _ _ _ _)

No. 333371

JUDGMENT AND ORDER OF DISMISSAL

The above entitled and numbered cause having come on regularly for hearing on defendants' motion to dismiss before the court on June 22, 1976; plaintiff present on his own behalf, and the defendants, Dixon, Garcia and Smith, represented by Harry A. Stewart, Jr., and all other defendants appearing by the Assistant City Attorney, Ben Marshall; the defendants having submitted legal memorandum and oral argument in support of their motion to dismiss; the plaintiff having presented exhibits, legal memorandum and oral argument in opposition to the motion to dismiss, the matter having been submitted to the court for its determination and the court having granted defendants' motion to dismiss and having heretofore made findings of fact and conclusions of law,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that defendants' motion to dismiss is granted, that plaintiff's complaint be dismissed with prejudice; that judgment be entered for defendants against plaintiff and that defendants recover the costs expended herein.

DONE IN OPEN COURT this 7th day of July, 1976.

Copies lodged July 2nd, 1976
with Judge Lawrence A. Doyle,
Jr., Superior Court, Phoenix,
Arizona and mailed to
Richard T. Tracy, Sr.
7437 N. 7th St.,. Phoenix,
Arizona

/s/ Lawrence A. Doyle, Jr.
Judge Lawrence A. Doyle,
Jr.

(Title of Action)

FINDINGS OF FACTS AND
CONCLUSIONS OF LAW

This matter came on for hearing on motion of defendants to dismiss the complaint, the plaintiff appearing in person on his own behalf, and the defendants, William Dixon, Richard A. Garcia, and Ralph G. Smith, Jr., appearing by Harry A. Stewart, Jr., and all other defendants appearing by Ben Marshall.

No evidence was taken, but exhibits were presented to the court, arguments were made, memoranda were submitted, and upon consideration, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That the Judicial Advisory Selection Committee, an advisory committee to the Phoenix City Council, held meetings regarding recommendations of qualified candidates to the City Council and later advised the City Council of its recommendations.

2. That the Phoenix City Council held an open, public

meeting on March 9, 1976, with plaintiff and his attorney, Richard Fay present. At the meeting Mr. Fay addressed the Council prior to the appointment of City Court Judges.

3. That the Phoenix City Council at said meeting appointed Ralph G. Smith, Jr., to the vacant judicial position which expired on or about December 20, 1975, appointed William Dixon and Richard A. Garcia to the vacant judicial positions that expired on February 14, 1976. These appointments were effective April 6, 1976.

4. That the Judicial Selection Advisory Committee in its recommendations, the City Council in its appointments, or any other defendants, made no negative statements or charges against plaintiff.

5. That plaintiff whose four year term as a City Court Judge of the City of Phoenix expired February 14, 1976, continued to exercise his duties until a successor qualified on April 6, 1976.

CONCLUSIONS OF LAW

1. That the Charter of the City of Phoenix, Chapter 8, provides for the creation of a City Court, jurisdiction in the appointment, term and removal of its Judges by the City Council of the City of Phoenix and is constitutional.

2. That the Phoenix City Council may create appropriate advisory committees.

3. That the Judicial Advisory Selection Committee in making its recommendations and the Phoenix City Council in appointing the City Court Judges complied with A.R.S. 38-431 et seq.

4. That plaintiff had no property interest in reappointment for an additional term, nor was he deprived of liberty by the failure to be reappointed by the City Council or the failure to be recommended by the Judicial Advisory Selection Committee.

5. That on March 9, 1976, the Phoenix City Council lawfully, without delegation, appointed defendants Ralph G. Smith, Mr., William F. Dixon, and Richard A. Garcia as Judges of the City Court effective April 6, 1976.

6. That Ralph G. Smith, Jr., is not a proper party to this action as his term of appointment is not involved.

DONE IN OPEN COURT this 7th day of July, 1976.

/s/ Lawrence H. Doyle Jr.
JUDGE OF THE SUPERIOR COURT

APPENDIX "E"

SUPREME COURT
STATE OF ARIZONA
Phoenix
85007
July 21, 1976

RICHARD T. TRACY, SR., Judge of the City Court, Phoenix, Arizona Petitioner, vs. THE SUPERIOR COURT, MARICOPA COUNTY HON. LAWRENCE H. DOYLE, JR., WILLIAM F. DIXON, Real Parties in Interest Respondents.	Supreme Court No. 12760 Maricopa County No. C 333371

The following action was taken by the Supreme Court of the State of Arizona on July 20, 1976 in regard to the above-entitled cause:

"ORDERED: The Court declines to accept jurisdiction of the Petition for Special Action."

Chief Justice James Duke Cameron did not participate in the determination of this matter.

CLIFFORD H. WARD, Clerk
By /s/ Mary Ann Hopkins
Deputy Clerk

APPENDIX "F"

[Letterhead of Supreme Court, State of Arizona]

May 5, 1977

Richard T. Tracy, Sr., Esq.
7437 North 7th Street
Phoenix, Arizona 85020

Andy Baumert, Esq.
Phoenix City Attorney
930 Municipal Building
251 West Washington Street
Phoenix, Arizona 85003
ATTN: Ben P. Marshall

RE: Supreme Court No. 13195
Court of Appeals No. 1 CA-CIV 3595
Maricopa County No. 333371
RICHARD T. TRACY, SR. v. WILLIAM P. DIXON, et al.

Gentlemen:

The above-referenced matter, transferred to the Supreme Court by Order of this Court dated April 8, 1977, is filed under Supreme Court No. 13195.

Oral Argument will be set before this Court at the earliest opportunity.

Very truly yours,
CLIFFORD H. WARD, Clerk

By /s/ Mary Ann Hopkins
Chief Deputy Clerk

kek
cc: Classie Gantt, Clerk, Court of Appeals, Division One, West Wing, State Capitol Building, Phoenix, Arizona 85007
Wilson D. Palmer, Clerk, Maricopa County Superior Court, 101 West Jefferson Street, Phoenix, Arizona 85003

APPENDIX "G"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD T. TRACY, SR. Plaintiff-Appellant, vs. RODGER A. GOLSTON, et al. Defendants-Appellees.	)	No. 77-2034 O R D E R

(FILED: June 8, 1977)

Before: TRASK and WALLACE, Circuit Judges

After due consideration the plaintiffs-appellant's Motion For Rehearing of Order Denying Appellant's Motion for Injunctive Relief and to Expedite Appeal Dated May 25, 1977, by the Court In Banc, is denied.

APPENDIX "H"

[Letterhead of Judge Richard T. Tracy]

September 27, 1973

Honorable R. C. Coulter, Jr.
Superior Court Division 24
125 West Washington Street
Phoenix, Arizona 85003

Re: Kilstrom vs Tracy
C 282326

Dear Judge Coulter:

Allow me to thank you for your patience at the hearing on the above caption matter on September 25th. You are correct, I cannot adjust to the system that currently exists and therefore, work hard to try and change the system. I deplore the fact that thousands of cases are plea bargained or dismissed without regard to the merits. That several lawyers have a ninety percent dismissal rate and never try a case. Such practise [sic] is not fair to other defendants or lawyers who do not manipulate the system. Over thirty-five percent of D.W.I. cases are reduced or acquited in the Phoenix City Court, of those appealed, an additional fifty-five percent are dismissed.

I have proposed legislation that would elminate a de novo trial when a trial in the lower court was waived and permit an appeal on questions of law to the Superior Court or Court of Appeals by both the defense and the State. Remands for trial and motions for a new trial are unheard of in Maricopa County, dismissal and plea bargains on appeal are common. Once defense attorneys find that cases will be disposed of on the merits, the number of trial setting in our Court will decrease, the appeal will become rare. In other Jurisdictions, appeals on questions of law far out number trial de novo.

In recent months, we have made great strides in bringing our case load current, affording all a fair trial and the

guilty an opportunity for rehabilitation. I am proud of my role and that is why I was so disturbed by the untrue allegations of the petition. Had the objection been made at the time of trial, rest assured that I would have considered another course of action.

I appreciate the fact that an ex parte restraining order was not granted by you in this case. It is the first time, to my knowledge, that a hearing was required. Such action, I am certain, would reduce the special actions filed, as well as increase the time before trial that an attorney would review his defense in a given case.

Sincerely yours,
/s/ Richard T. Tracy
Richard T. Tracy

RTT/hc

APPENDIX "I"

Arizona Republic
1974

Progress made in lower court revision drive

The Republic's report on the open meeting of the Advisory Committee on Lower Court Reorganization was somewhat disappointing to this reader. The negative reasons for reorganization were stressed, the positive aspects underplayed. I believe it was a healthy and productive discussion on a subject which has been under consideration since 1960 when the voters approved the Modern Courts Amendment to the State Constitution.

Nationally the court systems are being re-examined. The crime rate has steadily increased in spite of tripling law enforcement budgets over the past 10 years. This year over $10 billion will be spent on state and local law enforcement. The direct and indirect loss to the public from crime is impossible to ascertain. It serves no purpose to increase the size of the funnel (law enforcement) or the container (correction and reform) without at least examining the filter and opening of the container to look for obstructions.

The court budget for the entire state is about half that of the City of Phoenix for law enforcement. It is false economy to deprive the courts of the tools necessary to effectively perform their function.

At the meeting several obstructions were called to the committee's attention from both rural and urban areas: Plea-bargaining on a de novo appeal; the city being required to prosecute while the county retains the revenue; lack of communication between the various courts on issues seldom

presented and reported in the Supreme Court or Court of Appeals' opinions, yet dealt with daily by the trial courts and often inconsistently; most litigation is intermediate in nature, yet Arizona has no intermediate court; jurisdictional monetary limitations have failed to keep pace with inflation. The drafters of the state constitution in 1912 could not have anticipated the civil or criminal litigation generated by the auto age - we have already passed into the jet age. Few enterprises have made this transition without substantial modification. Can we expect courts to do so and remain effective?

Progress is being made. The new Rules of Criminal Procedure promulgated by the Supreme Court of Arizona are already eliminating delays which clogged the court and reducing the incidence of criminal activity by one awaiting trial. Plea-bargaining at the trial table is being discontinued, thus avoiding waste of court facilities and the inconvenience to witnesses.

Probation supervision in Arizona lower courts has been possible for less than two years, is now being implemented in some courts. This will eliminate the revolving door handling of cases, which is primarily an urban malady. One of the functions of the Advisory Committee on Court Reorganization is to determine methods of producing and distributing revenue for the operation of the courts, so that it will be more equitably distributed and perhaps those who use or abuse the courts will contribute more towards their support. Distinguished citizens are giving of their time without compensation to thoroughly examine and assist in developing a court system which will assure equal justice under the law.

RICHARD T. TRACY

No. 77-348

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

RICHARD T. TRACY, SR., PETITIONER

v.

RODGER A. GOLSTON, *ET AL.*, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

MARK WILMER
EDWARD JACOBSON
3100 Valley Center
Phoenix, Arizona 85073
Attorneys for Respondents

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-348
RICHARD T. TRACY, SR., PETITIONER
v.
RODGER A. GOLSTON, *ET AL.*, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

ARGUMENT

Petitioner has requested this Court to grant a Writ of Certiorari before judgment to the United States Court of Appeals for the Ninth Circuit to review a case presently on appeal to that Court from a decision of the United States District Court for the District of

Arizona.[1] All briefs have been submitted to the Court of Appeals. Oral argument, however, has not yet been scheduled and no decision has been reached by that Court. Respondents maintain that it would be a totally unwarranted and serious departure from normal appellate processes for the Court to grant a Writ of Certiorari before judgment in this case.

This Court has the power to review cases in the United States Courts of Appeals by Writ of Certiorari prior to judgment. 28 U.S.C. §1254(1) (1970). However, according to the rules of this Court:

> "A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court." U.S. Sup. Ct. Rule 20.

Thus, in cases of great public importance, interest, or emergency, such as the steel seizure case, *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952), or the Watergate tapes case, *United States v. Nixon*, 418 U.S. 683 (1974), this Court has exercised this extraordinary right to take a case from a court of appeals prior to judgment. The instant case, however, in no

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[1] Petitioner also is requesting that this Court grant a Writ of Certiorari before judgment to the Arizona Supreme Court in a somewhat related case, *Richard T. Tracy, Sr. v. William P. Dixon, et al.*, Nos. 12760 and 13195. Counsel for Respondents in the case pending before the Ninth Circuit have not participated in the Arizona Supreme Court action and, therefore, make no response herein to that portion of Petitioner's Petition relating to the state court proceedings.

way approaches the high level of public importance met by cases such as *Youngstown* or *Nixon* so as to justify immediate intervention by the United States Supreme Court.

This case involves a civil rights claim brought under 42 U.S.C. §§1983 and 1985(3) (1970) by a former judge of the Phoenix City Court alleging that the failure of the Phoenix Judicial Selection Advisory Board to recommend him for reappointment to the bench after expiration of his four-year term and the subsequent failure of the Phoenix City Council to reappoint him to the bench, deprived him of a property interest protected by the Fourteenth Amendment to the United States Constitution.

Civil rights cases involving alleged property interests in employment are neither new nor unusual. The legal standards to be applied in such cases, and the standards upon which Petitioner's case will be decided, have been announced by this Court in *Perry v. Sindermann*, 408 U.S. 593 (1972), and *Board of Regents v. Roth*, 408 U.S. 564 (1972). Those standards were recently reexamined and reaffirmed in *Codd v. Velger*, 45 U.S.L.W. 4175 (Feb. 22, 1977), and *Bishop v. Wood*, 426 U.S. 341 (1976).

There is no reason to suppose that the Court of Appeals for the Ninth Circuit will fail to apply correctly the principles already enunciated in the foregoing cases, if given the opportunity. Sound judicial economy and discretion dictate that the Ninth Circuit be afforded that opportunity in this case. Then, if Petitioner believes that the decision of the Ninth Circuit is in conflict with applicable Supreme Court decisions, Petitioner can present his Petition for

Writ of Certiorari in the normal course of appellate review under Rule 19 of the United States Supreme Court Rules.

CONCLUSION

The Petition for a Writ of Certiorari before judgment should be denied.

Respectfully submitted,

MARK WILMER
EDWARD JACOBSON

By MARK WILMER
Mark Wilmer

By EDWARD JACOBSON
Edward Jacobson
Attorneys for Respondents

IN THE

Supreme Court of the United States

No. 77-348

RICHARD T. TRACY, SR.

Petitioner,

v.

RODGER A. GOLSTON, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND THE ARIZONA SUPREME COURT

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

RICHARD T. TRACY, SR.
7437 North 7th Street
Phoenix, Arizona 85020
Petitioner Pro Se
Attorney for Petitioner

IN THE

Supreme Court of the United States

No. 77-348

RICHARD T. TRACY, SR.

Petitioner,

v.

RODGER A. GOLSTON, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND THE ARIZONA SUPREME COURT

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

ARGUMENT

Respondents' success to date attributable to a number of tribunals having departed from the usual and accepted course of judicial proceedings, advance in their Brief in opposition the principal argument that to grant the writ requested in the Petition would be a departure from the normal appellate proceedings. In drafting Rule 19(b), the United States Supreme Court Rules, this Court undoubtedly considered the constitutional responsibility to exercise its power of supervision over the courts of this nation would require such

departure from the normal appellate process. Excercise of this Court's supervisory powers is mandated by the Constitution when members of the judiciary become the aggressors and assume positions and powers unrelated to the judicial role as in the case at hand and are sheltered by others in the judiciary.

Seeking to vest the national judicial power, Alexander Hamilton assured concerned citizens that the "least dangerous" branch of government was the judiciary. Hamilton, in Federalist No. 78, assumed *a truly independent judiciary of which* "the general liberty of the citizen can never be endangered."

Interest by the public and numerous legislative branches in judicial selection, tenure, removal and independence also makes this a case of great public importance under Rule 20, United States Supreme Court Rules.

Respondents are incorrect in claiming that sound judicial economy dictates Petitioner's application be denied. There is but one transaction yet Respondents have succeeded in dividing Petitioner's claim between three separate courts and will, as they did in the District Court, argue that any possible relief lies in one of the other courts, while being sheltered by already asserted defense of privilege and immunity for official acts.

Sound judicial economy is the avoidance of a multiplicity of law suits by consolidation of actions in one court. Only at this time and in this Court can that be accomplished.

It can be seen that Respondents engage in a game. By substituting mayor for queen, monsignor for bishop, lawyer for rook, and so on, Respondents play with a full Chess set while Petitioner, a pawn, hasn't even a knight. Chess is a medieval game of maneuvering skill with men of unequal

value. Rules of Procedure, under our constitutional system, are intended to prevent justice from being checkmated and afford all men equal value.

Petitioner, unemployed for over nineteen months and in the process of relocating in Ohio where he may regain both reputation and security, seeks from this Court relief from attending numerous additional proceedings which the record will demonstrate, have to date not only conflicted with applicable decisions of this Court, but are often shrouded in secrecy and lack common courtesies usually available at the bar of justice.

The reasons to suppose that the Court of Appeals for the Ninth Circuit will not provide affirmative relief are adequately set forth in the Petition, reinforced by the continuance of Respondents' attitude which can best be described as arrogant from the outset. Petitioner consumed much time and expense briefing the case for the Ninth Circuit in good faith before the inevitable result became apparent with the filing of a sham brief and denial of his Motion for Rehearing by the Court in Banc.

Unaware of the filing or enlargement of time for filing a Brief in Opposition by Respondents concerning granting of a Writ of Certiorari to the Arizona Supreme Court, Petitioner must rest that portion of his case.

Respectfully submitted,

By Richard T. Tracy, Sr.
Petitioner Pro Se